IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17905 of 2006
With
SPECIAL CIVIL APPLICATION No. 17907 of 2006
With
SPECIAL CIVIL APPLICATION No. 17908 of 2006
With
SPECIAL CIVIL APPLICATION No. 17910 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AVNISH MAHAVIRPRASAD JAIN - Petitioner(s)
Versus
STATE OF GUJARAT THR. SECRETARY & 3 - Respondent(s)

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Appearance :
MR UMANG K CHOKSI for Petitioner(s) : 1,
Mr. Dipen Desai, Asst. GOVERNMENT PLEADER for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 4.
MR PURVISH J MALKAN for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 02/11/2007

ORAL COMMON JUDGMENT

In this group of petitions, since identical issues are arising, they have been heard together and are being disposed of by this common order.

2. In these petitions, the petitioners have challenged the orders passed under the Bombay Stamp Act seeking to recover higher stamp duty from the petitioners who have entered into registered sale deeds for purchase of immovable properties. It is the case of the petitioners that before passing adverse orders enhancing the stamp duties, the authorities had not served notices on the petitioners.

3. Having heard learned advocate Shri Chokshi for the petitioners and learned AGP Shri Dipen Desai for the respondents, I find that at Annexure 'D', the petitioners have produced a printed order of the Deputy Collector [Stamp Duty Assessment] passed in December, 2005. The order takes into account show cause notice dated 17th December 2005. The order however states that hearing had taken place on 17th December 2005. Apparently therefore, the contention of the counsel of the petitioners that no notice was served on the petitioners before passing the impugned order, stands fortified. The show cause notice was issued on 17th December 2005. Obviously, it was not possible for the authority to hold a hearing of the show cause notice proceedings also on 17th December 2005.

4. On the short ground, I find that impugned order is required to be quashed. There are several other contentions raised by both sides. However I find flaws in the first order passed by the authorities. It is not necessary to go into other aspects of the matter at this stage., since I am inclined to remand the proceedings for fresh hearing and disposal.

5. In the result, the petitions are allowed. The impugned orders passed by the stamp duty authorities seeking higher stamp duty from the petitioners are quashed. It would, however be open for the respondents to issue fresh show notices and pass further orders in accordance with law after giving opportunity of hearing to the petitioners. To avoid complications in future, it is provided that the petitioners shall supply their current detailed addresses to the Deputy Collector of Stamp Duty within the period of two weeks from today upon which it will be open for the said authority to issue fresh show cause notices if so desired. With these directions, the petitions are disposed of. Rule is made absolute to the aforesaid extent with no order as to costs. D.S. Permitted.

[Akil Kureshi, J.]

rmr.